

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

OCEAN COUNTY VOCATIONAL
TECHNICAL SCHOOL,

Respondent,

-and-

Docket Nos. CO-2021-127

OCEAN COUNTY VOCATIONAL
TECHNICAL EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission grants the Association's summary judgment motion, and denies the County's cross-motion for summary judgment, in an unfair practice charge (UPC) filed by the Association. The UPC alleges that the County violated N.J.S.A. 34:13A-5.4(a)(1) and (5) when it unilaterally issued a memorandum prohibiting employees from using sick leave for intermittent leave taken under the Family Medical Leave Act (FMLA), and/or the New Jersey Family Leave Act (NJFLA) and when it unilaterally implemented a new family leave policy mandating that sick leave could only be used concurrently with NJFLA leave. The Commission finds that the County's unilateral actions in prohibiting the use of sick leave to care for family members and mandating that sick leave could only be used concurrently with NJFLA are mandatorily negotiable. The Commission further finds that N.J.S.A. 18A:30-1 does not preempt negotiations over the use of sick leave to care for a family member or maternity leave. The Commission concludes that the County's unilateral implementation of both the memorandum and new family leave policy that affected the employees' use of sick leave in connection with FMLA/NJFLA benefits without negotiations violated 34:13A-5.4a(1) and (5).

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Charging Party.

Appearances:

For the Respondent, Cleary, Giacobbe, Alfieri, Jacobs, LLC attorneys (Bruce W. Padula, Esq., of counsel and on the brief; Nicolas DelGuadio, Esq., of counsel and on the brief)

For the Charging Party, Oxfeld Cohen, P.C., attorneys (Sanford R. Oxfeld, of counsel; R. Leigh Adelman, on the brief)

DECISION

On August 12, 2021, Ocean County Vocational Technical Education Association (Association) filed an unfair practice charge (UPC) against the Ocean County Vocational Technical School (County).^{1/} The Association's UPC alleges that the County

^{1/} The Association's UPC was originally filed on December 16, 2020, amended on January 20, 2021, and amended again to its final present form on August 12, 2021. On October 7, 2021, a Commission Hearing Examiner, after reviewing position statements submitted by the parties, granted the Association leave to amend the August 3, 2021 complaint on the UPC issued by the Director of Unfair Practices to include the Association's final amended UPC of August 12.

violated the New Jersey Employer-Employee Relations Act (the Act), N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1) and (5),^{2/} on September 29, 2020, when it issued a memorandum prohibiting employees from using sick leave for intermittent leave taken under the Family Medical Leave Act, 29 U.S.C. §2601 et seq., (FMLA), and/or the New Jersey Family Leave Act, N.J.S.A. 34:11B-1 et seq. (NJFLA), thereby unilaterally changing the parties' past practice on use of sick leave. The UPC further alleges that in July 2021 the County unilaterally issued, without negotiating with the Association, the new Family Leave Policy 1643, which required, in pertinent part, that "sick leave may only be used concurrently with the NJFLA leave in accordance with the provisions of N.J.S.A. 18A:30-1 and N.J.S.A. 34:11B-3."

On October 22, 2021, the Association filed a motion for summary judgment on the UPC, and on November 12, 2021 the County filed a cross-motion for summary judgment. The Association's motion was supported by briefs, exhibits, and the certification

^{2/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

of its counsel, Rachel Leigh Adelman.^{3/} The County's motion was supported by a brief and the certification of Dr. Michael Maschi, Assistant Superintendent. The parties' motions for summary judgment were referred to the Commission for a decision pursuant to N.J.A.C. 19:14-4.8(a). Based upon the record submitted, we find the following facts.

FINDINGS OF FACT

1. The County and the Association are, respectively, public employer and public employee representative within the meaning of the Act.

2. The Association represents, among other positions, all teaching staff, aides and custodians employed by the County.

3. The County and Association are parties to a collective negotiations agreement (CNA) with a term of July 1, 2019 through June 30, 2022.

4. Article 17 (Temporary Leaves of Absence) of the parties' CNA defines sick leave as "the absence from his or her post of duty, of any such person because of personal illness or injury, or because he or she has been excluded from school by the school doctor on account of a contagious disease or of being quarantined for such a disease in his or her immediate household."

^{3/} N.J.A.C. 19:13-3.6(f) requires that all pertinent facts be supported by certifications based upon personal knowledge. Adelman's certification appears to simply authenticate the exhibits submitted by the Association, but does not certify to the facts asserted in the Association's briefs.

5. Under both the County's former Family Leave Policies 3431.1 (Teaching Staff) and 4431.1 (Support Staff), adopted in 2005 and revised in 2016, the County affirmed the employees' rights to leave under the FMLA and NJFLA. These policies were in effect when the Association filed its December 16, 2020 UPC. In July 2021, the County unilaterally replaced these policies with Family Leave Policy 1643.

6. Section H, of both former Family Leave policies, provides that "whether a staff member is required to use sick time or any other accrued leave time concurrent with FMLA or NJFLA leave time will depend upon either the district's practice or a provision in the district's collective bargaining agreement, if applicable."

7. The Association asserts that it has been the parties' established past practice, during the period of the former policies, and at least as of June 3, 2020, that employees were allowed to use sick leave to supplement otherwise approved unpaid FMLA/NJFLA leave to care for family members and for maternity leave. The County admits that at times employees were permitted to use sick leave during periods when the employees would be otherwise eligible for unpaid FMLA/NJFLA leave, but denies that this was an established past practice or the County's official policy.

8. The Association asserts that under the parties' past practice school employees were allowed, but not required, to apply for New Jersey Family Leave Insurance (NJFLI) benefits before having to use their sick leave for family care or maternity leave. The County denies that there was such a past practice or official policy. Maschi certifies that the County has not required employees to apply for NJFLI benefits, but allows employees to use paid sick leave during periods of otherwise unpaid FMLA/NJFLA leave to care for family members or for bonding with a child when such leave is taken as "family temporary disability leave".

9. On September 29, 2020, Maschi issued a memorandum (Maschi Memo) entitled "Use of Sick Leave in Accordance with N.J.S.A. 18A:30-1", stating in pertinent part:

The Family and Medical Leave Act (FMLA) and New Jersey Family Leave Act (NJFLA) provides eligible employees with leave, among other reasons, to care for certain family members with serious health conditions. Sometimes, leave for this purpose is taken intermittently. In relation to that, employees have used sick leave in the past. Please be advised that N.J.S.A. 18A:30-1 provides that sick leave can only be used for an employee's own illness or disability. Thus, from this point forward, the District will not permit use of sick days for leave to care for a family member.

Notwithstanding, in the event an eligible employee applies for and is approved for benefits from the New Jersey Family Leave Insurance (NJFLI) program, the employee may be able to utilize sick days for leave which

will commensurately reduce his/her NJFLI benefits. [Emphasis added]

10. In addition to the above admission in the Maschi Memo that the County, in the past, allowed sick leave to be used during periods of FMLA/NJFLA leave, the Association submitted a June 24, 2020 email from Debra Wilkowski, administrative assistant to the Superintendent's Office, to an employee in support of its allegations of an established past practice. The email states, in pertinent part:

Basically, the Federal Family Leave (FMLA) is an unpaid leave in which you can use sick, personal or vacation time for. It is just documented as FMLA under the law for protection. This is what most people do in the case of caring for a family member... However, the State of NJ also has a leave. Most of the time employees do not use this for intermittent leave though...I just wanted you to be aware that it is available. I know you have a lot of sick time that you could use.

11. In response to the Association's Grievance Co-Chair, Maschi sent the following email on November 25, 2020, in pertinent part:

As the Association leadership has been made aware, the District's position is not a change in policy, nor a change to any entitlement of its members. As was explained, N.J.S.A. 18A:30-1 requires that sick days can only be used when a school employee is sick. This is not new law, but is well-established and accepted.

12. N.J.S.A. 18A:30-1 (Definition of Sick Leave) provides:

Sick leave is hereby defined to mean the absence from his or her post of duty, of any person because of personal disability due to illness or injury, or because he or she has been excluded from school by the school district's medical authorities on account of a contagious disease or of being quarantined for such a disease in his or her immediate household.

13. In July 2021, the County unilaterally issued Family Leave Policy 1643, which provides in pertinent part:

9. Local Board of Education Practices

a. Accrued Paid NJFLA Leave

(1) Whether a staff member is required to use any other accrued leave time concurrent with NJFLA leave time will depend upon either the school district's practice or a provision in a collective bargaining agreement, if applicable.

(a) Sick leave may only be used concurrently with the NJFLA leave in accordance with the provisions of N.J.S.A. 18A:30-1 and N.J.S.A. 34:11B-3.

14. Regardless of whether the Maschi Memo or Family Leave Policy 1643 changed an established past practice regarding the use of sick leave during periods of FMLA/NJFLA leave, the parties did not negotiate prior to the issuance of the Maschi Memo, which prohibited the use of sick days to care for a family member, or Family Leave Policy 1643, which established that sick leave could only be used concurrently with NJFLA leave.

STANDARD OF REVIEW

Summary judgment will be granted if there are no material facts in dispute and the movant is entitled to relief as a matter of law. Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995); Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 73-75 (1954). N.J.A.C. 19:14-4.8(e) provides:

If it appears from the pleadings, together with the briefs, affidavits and other documents filed that there exists no genuine issue of material fact and that the movant or cross-movant is entitled to its requested relief as a matter of law, the motion or cross-motion for summary judgment may be granted and the requested relief may be ordered.

In determining whether there exists a “genuine issue” of material fact that precludes summary judgment, we must “consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party.” Brill, 142 N.J. at 540. We “must grant all the favorable inferences to the non-movant.” Id. at 536. However, bare conclusory assertions in pleadings or affidavits without factual support are insufficient to defeat a meritorious application for summary judgment. See Brae Asset Fund, L.P., v. Newman, 327 N.J. Super. 129, 134 (App. Div. 1999).

ARGUMENTS

The Association argues that the County's unilateral implementation of the Maschi Memo and Family Leave Policy 1643 constituted an unfair practice in violation of the Act because those actions changed, without negotiations, the parties' established past practice of allowing employees to use sick leave during periods of unpaid FMLA/NJFLA leave to care for family members or for maternity leave. Citing Commission precedent, the Association argues that N.J.S.A. 18A:30-1 does not statutorily preempt negotiations over the use of sick leave to care for family members or maternity leave during a period of FMLA/NJFLA leave. In support of its argument, the Association cites N.J.S.A. 43:21-39.1(c).^{4/}

4/ N.J.S.A. 43:21-39.1(c) (Compensation for family temporary disability leave; conditions) provides:

The employer of an individual may, notwithstanding any other provision of law, including the provisions of N.J.S.A. 18A:30-1 et seq., permit the individual, during a period of family temporary disability leave, to use any paid sick leave, vacation time or other leave at full pay made available by the employer before the individual uses disability benefits for family temporary disability leave pursuant to P.L.2008, c.17 (C.43:21-39.1 et al.). Nothing in P.L.2008, c.17 (C.43:21-39.1 et al.) shall be construed as nullifying any provision of an existing collective bargaining agreement or employer policy, or preventing any new provision of a collective bargaining agreement or employer policy, which provides employees more

(continued...)

The Association argues that this statute, excepting the definition of sick leave in N.J.S.A. 18A:30-1, permits employees to use paid benefit leave before using any of their family temporary disability leave benefits. Moreover, the Association argues that this statute expressly allows employers to provide more generous leave benefits, and the statute states that it shall not nullify any CNA provision, which includes established past practices, that provides more generous leave benefits. Additionally, the Association asserts that 29 U.S.C.S. § 2652(a) of the FMLA^{5/} provides a similar assurance that greater family

4/ (...continued)

generous leave or gives employees greater rights to select which kind of leave is used or select the order in which the different kinds of leave are used. Nothing in P.L.2008, c.17 (C.43:21-39.1 et al.) shall be construed as preventing an employer from providing more generous benefits than are provided under P.L.2008, c.17 (C.43:21-39.1 et al.) or providing benefits which supplement the benefits provided under P.L.2008, c.17 (C.43:21-39.1 et al.) for some or all of the employer's employees.

5/ 29 U.S.C.S. § 2652(a) (Effect on existing employment benefits) provides:

Nothing in this Act or any amendment made by this Act shall be construed to diminish the obligation of an employer to comply with any collective bargaining agreement or any employment benefit program or plan that provides greater family or medical leave rights to employees than the rights established under this Act or any amendment made by this Act.

leave rights established through collective negotiations shall not be diminished. The Association cites to Commission precedent which further reiterates the principle that parties to a CNA may negotiate for greater leave benefits than the floor of family leave benefits established by statutes. The Association argues that under the parties' past practice, the County provided greater family leave benefits by allowing employees to use paid sick leave to care for family members and maternity leave without having to use that paid leave concurrently with FMLA/NJFLA leave and before having to use NJFLI benefits. The Association maintains that the County's unilateral actions changed that established term and condition of employment, which is an unfair labor practice, and thus, its motion for summary judgment should be granted.

The County argues that the Associations UPC should be dismissed as a matter of law because the use of sick leave is statutorily preempted and the Association's desired use of sick leave is contrary to a negotiated provision in the parties' CNA. The County disputes that either of the Board's actions, the Maschi Memo or Family Leave Policy 1643, altered an established past practice or official policy, but rather, they reiterated the existing law and clarified the County's family leave policy. The County asserts that the email from an administrative assistant explaining the FMLA/NJFLA process is insufficient to establish

the Association's allegation of a past practice. The County argues that N.J.S.A. 18A:30-1 mandates that paid sick leave may only be used for absences related to an employee's own illness, which was reiterated in the Maschi Memo. The County argues that the County's Family Leave Policy, as articulated in the Maschi Memo, complies with N.J.S.A. 43:21-39.1(c) in that it permits the use of sick leave during a period of family temporary disability; in other words, once the employee applies and is approved for NJFLI benefits. Moreover, the County argues that the CNA's negotiated definition of sick leave comports with N.J.S.A. 18A:30-1 and the County's Family Leave Policy; thus, the County had no obligation to negotiate over limiting the use of sick leave to what had already been established by statute and contract. Therefore, the County asserts that the Association's UPC should be dismissed, and its cross-motion for summary judgment should be granted.

In its reply brief, the Association responds that the County admitted that at times it allowed employees to use sick leave during periods of unpaid FMLA/NJFLA leave to care for family members and maternity leave, and along with the County's email, establishes the Association's claim of an established past practice. The Association argues that other than a conclusory denial in the County's certification the County has not provided any evidence to refute the Association's claim of an established

past practice. Thus, the Association argues that there exists no genuine issue of material fact sufficient to defeat its motion for summary judgment. The Association further replies that the CNA's definition of sick leave does not refer to FMLA/NJFLA leave and the CNA is silent on that subject. The Association argues that since the CNA does not expressly set forth the use of sick leave as it relates to the FMLA/NJFLA, then the parties' established past practice would control with the same weight as an express contract term. The Association reiterates that the County's unilateral issuance of the Maschi Memo and Family Leave Policy 1643 changed the parties' established past practice regarding the use of sick leave in connection with FMLA/NJFLA leave, which is a material term and condition of employment, and constituted an unfair labor practice.

ANALYSIS

N.J.S.A. 34:13A-5.3 provides in pertinent part:

...the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances, disciplinary disputes, and other terms and conditions of employment...Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established.

The New Jersey Supreme Court reiterated this statutory duty to negotiate:

Thus, employers are barred from "unilaterally altering . . . mandatory bargaining topics, whether established by expired contract or by past practice, without first bargaining to impasse." Bd. of Educ. v. Neptune Twp. Educ. Ass'n, 144 N.J. 16, 22, 675 A.2d 611 (1996) (citation omitted); accord Galloway Twp. Bd. of Educ. v. Galloway Twp. Educ. Ass'n, 78 N.J. 25, 48, 393 A.2d 218 (1978) (finding Legislature, through enactment of EERA, "recognized that the unilateral imposition of working conditions is the antithesis of its goal that the terms and conditions of public employment be established through bilateral negotiation").

[Atlantic Cty., 230 N.J. 237, 252 (2017).]

Here, the record establishes that the County, without negotiating with the Association, announced in the September 29 Maschi Memo that "from this point forward" employees would not be permitted to use sick days to care for a family member, and the mandate that sick leave could only be used concurrently with NJFLA leave in Family Leave Policy 1643. Thus, the County will have violated its statutory obligation to negotiate if the subject of its policy is mandatorily negotiable.

A subject is negotiable between public employers and employees when:

(1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to

balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions.

[In re Local 195, IFPTE, 88 N.J. 393, 404-405.]

We must balance the parties' interests in light of the particular facts and arguments presented. City of Jersey City v. Jersey City POBA, 154 N.J. 555, 574-575 (1998).

In general, paid and unpaid leaves of absence intimately and directly affect employee work and welfare and do not significantly interfere with the determination of governmental policy. See, e.g., Burlington Cty. College Faculty Ass'n v. Board of Trustees, Burlington Cty. College, 64 N.J. 10, 14 (1973); Piscataway Tp. Bd. of Ed. v. Piscataway Maintenance & Custodial Ass'n, 152 N.J. Super. 235, 243-44 (1977); Hoboken Bd. of Ed., P.E.R.C. No. 81-97, 7 NJPER 135 (¶12058 1981), aff'd, NJPER Supp.2d 113 (¶95 App. Div. 1982). Negotiations will be preempted, however, if contract language conflicts with a statute or regulation that expressly, specifically, and comprehensively sets that term and condition of employment. Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38, 44 (1982). The legislative provision must "speak in the imperative and leave nothing to the discretion of the public employer." State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80 (1978).

Generally, both the FMLA and the NJFLA are intended to provide eligible employees with twelve work weeks of unpaid leave per year for specified family or medical reasons. See 29 U.S.C. §2601 et seq.; N.J.S.A. 34:11B-1 et seq. Additionally, FMLA allows an employer to require the employee to substitute accrued paid leave, or use paid leave concurrently, for any part of FMLA leave. 29 U.S.C. §2601 et seq. The FMLA's implementing regulations provide, in relevant part, as follows:

[T]he employer may require the employee to substitute accrued paid leave for unpaid FMLA leave. The term substitute means that the paid leave provided by the employer, and accrued pursuant to established policies of the employer, will run concurrently with the unpaid FMLA leave. . . . An employee's ability to substitute accrued paid leave is determined by the terms and conditions of the employer's normal leave policy. . . . Employers may not discriminate against employees on FMLA leave in the administration of their paid leave policies.

[29 CFR 825.207(a).]

Likewise, the NJFLA's implementing regulations provide, in relevant part, that "[i]f an employer has had a past practice or policy of requiring its employees to exhaust all accrued paid leave during a leave of absence, the employer may require employees to do so during a family leave." N.J.A.C. 13:14-1.7.

The Commission and our Courts have found that an employer's unilateral requirement that paid leave be used concurrently with FMLA leave is mandatorily negotiable. Lumberton Ed. Ass'n and

Lumberton Tp. Bd. of Ed., P.E.R.C. No. 2002-13, 27 NJPER 372 (¶32136 2001), aff'd, 28 NJPER 427 (¶33156 App. Div. 2002) (the FMLA sets minimum family leave benefits and does not eliminate all employer discretion to negotiate with union for greater benefits); see also Union Cty., P.E.R.C. No. 2021-57, 48 NJPER 46 (¶12 2021) (finding mandatorily negotiable and legally arbitrable an employer's requirement to use sick leave for NJFLA leave). Similarly, in Madison Bd. of Ed., 2016 N.J. Super. Unpub. LEXIS 1038 (App. Div. 2016), the employer asserted that an NJFLA regulation requires NJFLA and FMLA leave to be used concurrently. The court held that N.J.S.A. 34:11B-14 "expressly authorizes the Board to negotiate with the [Association] over leave benefits in excess of those provided for in the NJFLA and its accompanying regulations," and, therefore, the regulation was not preemptive. Madison at *7-8. Lastly, the Commission has found that N.J.S.A. 18A:30-1 does not statutorily preempt negotiations over a contract provision allowing for the use of sick leave due to family illness. See South Hunterdon Reg. Bd. of Ed., P.E.R.C. No. 2013-67, 39 NJPER 460 (¶146 2013). The common principle running through the above cases is that issues concerning the use of paid sick leave in connection with FMLA/NJFLA leave are mandatorily negotiable, and the FMLA/NJFLA statutes do not preempt such negotiations.

Likewise, here we find that the County's unilateral actions in prohibiting the use of sick leave to care for a family member, through the Maschi Memo, and mandating that sick leave could only be used concurrently with NJFLA, through Family Leave Policy 1643, are mandatorily negotiable. Regardless of whether the County's actions altered an established practice, as alleged by the Association, or were entirely new policies, such policies affecting the use of paid sick leave in connection with FMLA/NJFLA leave are material terms and conditions of employment that are mandatorily negotiable. The above cited cases do not posit that the employer must provide greater leave benefits than the minimum statutory floor, but rather, that greater leave benefits may be negotiated and if greater leave benefits were already established that the employer may not diminish those benefits without negotiations. Here, the Association's desired use of sick leave is not preempted by the FMLA/NJFLA statutes, and thus, the County is required to negotiate prior to implementing or altering the use of paid sick leave as it relates to FMLA/NJFLA leave.

Consistent with South Hunterdon, supra, we are not persuaded by the County's argument that N.J.S.A. 18A:30-1 requires that the County prohibit the use of sick leave to care for a family member or maternity leave. The FMLA and NJFLA allow leave for such purposes and those statutes allow parties to negotiate over

whether paid sick leave can be used concurrently or consecutively. Moreover, we are not persuaded by the County's argument that the CNA's definition of sick leave reflects a negotiated agreement on the use of sick leave in connection with FMLA/NJFLA leave. The parties agree that the CNA is silent as to the use of sick leave in connection with FMLA/NJFLA leave. Thus, a policy such as Family Leave Policy 1643, which establishes a policy not contained in the CNA on this subject, must be negotiated prior to implementation.

Further, the County does not argue that negotiations over the use of sick leave as it relates to FMLA/NJFLA leave would significantly interfere with determination of its policy; rather, the County argues that its actions are simply a re-articulation of the law and clarification of its existing policy. Thus, in balancing the parties' interests, we find the interest of the Association's members in securing their ability to use sick leave to care for family members or maternity leave and being able to use such sick leave consecutively with FMLA/NJFLA leave outweighs the County's interest.

Lastly, we find no genuine issue of material fact sufficient to defeat the Association's summary judgment motion. Although we must view facts in the light most favorable to the party opposing summary judgment, we note that the County simply denies, in Maschi's certification, that a past practice existed with

regard to employees using sick leave to care for family members. Such a bald denial without providing further evidence may not be sufficient to defeat summary judgment. See Brae, supra. Whether the County's actions altered an established past practice is not integral to our findings herein since it is undisputed that the implementation of the Maschi Memo was unilateral and presented a change in terms and conditions of employment.

Accordingly, we find that the County's unilateral implementation of its prohibition on allowing the use of sick leave to care for family members and maternity leave and its mandate that sick leave could only be used concurrently with NJFLA leave without negotiations violates sections 5.4a(1) and (5) of the Act. We therefore grant the Association's summary judgment motion and deny the County's cross-motion for summary judgment.

ORDER

1. The Association's motion for summary judgment is granted. The County's cross-motion for summary judgment is denied.

2. The County is ordered to:

A. Cease and desist from:

1.) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act by implementing the Maschi Memo, which prohibits employees

from using sick leave to care for family members, and Family Leave Policy 1643, which requires paid leave time to be used concurrently with NJFLA leave, without prior negotiations.

2.) Refusing to negotiate in good faith with the Association concerning terms and conditions of employment of employees in its unit by implementing the Maschi Memo, which prohibits employees from using sick leave to care for family members, and Family Leave Policy 1643, which requires paid leave time to be used concurrently with NJFLA leave, without prior negotiations.

B. Take the following action:

1.) Restore the status quo prior to the County's issuance of the September 29 Maschi Memo prohibiting the use of sick leave for the care of family members and prior to the issuance of the July 2021 Family Leave Policy 1643 mandating that sick leave may only be used concurrently with NJFLA leave.

2.) Negotiate in good faith with the Association over the use of paid sick leave during periods where employees would otherwise be eligible for unpaid FMLA/NJFLA leave to care for family members and maternity leave and over Family Leave Policy 1643's mandate that sick leave may only be used concurrently with NJFLA leave.

3.) Post in all places where notices to employees are customarily posted, copies of the attached notice marked as

"Appendix A." Copies of such, on forms to be provided by the Commission, will be posted immediately upon receipt thereof and after being signed by the Respondent's authorized representative will be maintained by it for at least sixty (60) consecutive days. Reasonable steps will be taken by the Respondent to ensure that such notices are not altered, defaced or covered by other materials; and,

4.) Within twenty (20) days of receipt of this order, notify the Chair of the Commission regarding what steps the Respondent has taken to comply with this order.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Jones, Papero and Voos voted in favor of this decision. None opposed. Commissioners Bonanni and Ford recused themselves.

ISSUED: February 24, 2022

Trenton, New Jersey



RECOMMENDED



NOTICE TO EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

AND IN ORDER TO EFFECTUATE THE POLICIES OF THE

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT, AS AMENDED,

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act by implementing the Maschi Memo, which prohibits employees from using sick leave to care for family members, and Family Leave Policy 1643, which requires paid leave time to be used concurrently with NJFLA leave, without prior negotiations.

WE WILL cease and desist from refusing to negotiate in good faith with the Association concerning terms and conditions of employment of employees in its unit by implementing the Maschi Memo, which prohibits employees from using sick leave to care for family members, and Family Leave Policy 1643, which requires paid leave time to be used concurrently with NJFLA leave, without prior negotiations.

WE WILL restore the status quo prior to the County's issuance of the September 29 Maschi Memo prohibiting the use of sick leave for the care of family members and prior to the issuance of the July 2021 Family Leave Policy 1643 mandating that sick leave may only be used concurrently with NJFLA leave.

WE WILL negotiate in good faith with the Association over the use of paid sick leave during periods where employees would otherwise be eligible for unpaid FMLA/NJFLA leave to care for family members and maternity leave and over Family Leave Policy 1643's mandate that sick leave may only be used concurrently with NJFLA leave.

Docket No. CO-2021-127

Ocean County Vocational Technical
Education Association
(Public Employer)

Date: _____

By: _____

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, PO Box 429, Trenton, NJ 08625-0429 (609) 292-9830